IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 236 of 1982

in

SPECIAL CIVIL APPLICATIONNo 1049 of 1982

For Approval and Signature:

Hon'ble ACTING CHIEF JUSTICE MR.JN BHATT

and

Hon'ble MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

ILABEN C DESAI

Versus

GOVERNMENT OF GUJARAT

Appearance:

1. LETTERS PATENT APPEAL No. 236 of 1982

MR JD AJMERA for Appellant No.

Ms. Manisha Lavkumar, AGP for Respondent No. 1-3,5

M/S NJ MEHTA ASSO. for Respondent No. 4

NOTICE SERVED for Respondent No. 6

NOTICE UNSERVED for Respondent No. 7

CORAM : ACTING CHIEF JUSTICE MR.JN BHATT

and

MR.JUSTICE K.A.PUJ

Date of decision: 07/04/2003

ORAL JUDGEMENT

(Per : MR.JUSTICE K.A.PUJ)

The present Letters Patent Appeal is filed against the order and judgment passed by the learned Single Judge of this Court on 7th May 1982 in Special Civil Application No. 1049 of 1982, whereby the petition challenging the order of Director of Education against termination of the appellant as an Assistant Teacher from the respondent School, was dismissed. While dismissing the said petition, the learned Single Judge has observed that the only ground on which the petitioner could have legitimate grievance was that for the purpose of grant-in-aid the appointment should not have been held illegal with retrospective effect, that is with effect from the date of appointment of the petitioner. It was further observed that the petitioner was appointed in August 1980 after intimation with regard to her appointment was given to the District Education Officer. The show cause notice was issued in October 1981. The decision on the show cause notice was taken by the District Education Officer in February 1982 and the Director had decided the dispute in April 1982. Considering this factual scenario, the learned Single Judge has observed that even if the appointment was found to be not legal and proper, the grant-in-aid ought not to be withheld retrospectively. The learned Single Judge has, therefore, held that it would be just and proper to direct the concerned respondents not to withhold the grant with regard to the petitioner till the end of current academic year. It was also clarified that the said direction was issued irrespective of the merits of the case and in view of the circumstances spelt out in the judgment. After having recorded the complaint of the petitioner that she was not paid the salary for the months of February and March 1982, the learned Single Judge has directed the School management to pay the salary for the said period to the petitioner within a period of 15 days from the date of judgment and to continue to pay the same until her services were terminated at the end of the said academic year.

2. It is this order, of the learned Single Judge, which is under challenge in the present Letters Patent Appeal. Heard Mr. JD Ajmera, learned advocate appearing for the appellant, Ms. Manisha Lavkumar, learned AGP

appearing for respondents No. 1, 2, 3 and 5, and Mr. Shalin Mehta, learned advocate appearing for respondent No.4. After having considered the submissions made by the learned advocates appearing for the respective parties and after having gone through the entire case record, as well as the judgment and order of the learned Single Judge, we are of the view that no interference therein is required while exercising the appellate powers under Clause 15 of Letters Patent. Even otherwise, more than 21 years have passed and the present Appeal would not have any survival value because of the aflux of time. Be that as it may, since there is no merit or substance in the matter, the Appeal deserves to be dismissed and hence it is accordingly dismissed with no order as to costs.

[J.N. Bhatt,Actg.C.J.]

rmr. [K.A. Puj, J.]